IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4824 of 2007
With
CRIMINAL MISC.APPLICATION No. 4976 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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VIPUL D.JAGIRDAR - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR RR MARSHALL for Applicant(s) : 1,
MR M.R.MENGDEY, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,
MR ANIL S DAVE for Respondent(s) : 3,
MRS SHILPA R SHAH for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/08/2007

ORAL JUDGMENT

1. Rule. Mr.M.R.Mengdey, learned Additional

Public Prosecutor waives service of rule on behalf of respondent No.1 – State. Ms.Shilpa R.Shah, learned Advocate waives service of rule on behalf of respondent No.3 – original complainant. With the consent of the learned Advocates, both the applications are taken up for final hearing today. As common question of law and facts arise in both the applications, and arising out of common F.I.R., they are being disposed of by this common judgment.

2. Criminal Misc. Application No. 4824 of 2007 is filed by the applicant – original accused No.4 and Criminal Misc. Application No. 4976 of 2007 is filed by the applicant – original accused No.3 for quashing and setting aside the F.I.R. being I.C.R.N o. 327 of 2007 registered with Umra Police Station, Surat.

A criminal complaint being I.C.R.No. 327 of 2007 is filed by respondent No.3 – original complainant on 23.04.2007 for the offences

alleged to have happened on 28.04.2006 against the respective petitioners and two others for the offences punishable under Sections 33, 34, 114, 120A, 120B, 406, 420, 386, 506(2) of the Indian Penal Code. At the outset it is to be noted that both the respective petitioners are Advocates practicing in the Surat District Court. Aforesaid complaint is filed alleging inter-alia that the complainant has purchased flat No. 72A situated at Dhavalgiri Apartment, Surat from Alpit Harshakumar Thakkar on 04.06.2005 and accused no.1 and 10 others have executed power of attorney on 29.07.2002 and sold the property mentioned in the schedule thereto and also have received consideration. Inspite of that original accused no.1 with a view to get more money in connivance with the petitioners – original accused nos. 3 and 4 have filed various complaints / suits. It is further alleged that all the accused have by making false representations have filed various suits and complaints and original accused Nos. 3 and 4 are

instigating original accused No.2 and therefore, it is alleged that the petitioners and other have committed aforesaid offences. Being aggrieved and dissatisfied with the same, petitioners original accused Nos. 3 and 4 have preferred present application under Section 482 of the Cr.P.C. to quash the impugned F.I.R.

3. Mr.R.R.Marshall, learned Advocate appearing on behalf of the petitioners has submitted that so far as the original accused No. 3 is concerned, he has only filed one application for joining party in the suit filed by respondent No.3 – original complainant in Regular Civil Suit No. 74 of 2006 pending in the Court of learned Civil Judge (SD), Surat and the said application was for joining original accused No.2 as party – defendant to the said proceedings and the said application was allowed and original accused No.1 was permitted to be joined as party defendant in the said proceedings and except that the petitioner have not done anything. It is

submitted merely because original accused No.3 as an Advocate filed application for joining party, it cannot be said that he has committed any offences as alleged. It is also further submitted that so far as original accused No.4 is concerned, against the order passed by the learned trial Court allowing the application for permitting original accused No.2 to be joined as party respondent to the aforesaid proceedings, original complainant preferred appeal before the District Court and in the said appeal original accused No.4 appeared as an Advocate on behalf of original accused No.1 and that subsequently one another suit came to be filed by original accused No.1 through Advocate - original accused No.4 i.e. the petitioner of Cr.M.A. No. 4824 of 2007. It is submitted that except above, nothing has been done by the said petitioner – original accused No.4. It is submitted that merely because both the petitioners appeared as Advocates on behalf of original accused No.2 in Court proceedings, it cannot be said that the

petitioners / applicants have committed the offences as alleged. It is submitted on bare reading of the complaint main allegations are against original accused Nos.1 and 2 and even considering the complaint as a whole, no case is made out against the petitioners. It is submitted that the petitioners – original accused Nos. 3 and 4 are Advocates appearing in the District Court, Surat since many years. It is submitted that merely because they have appeared on behalf of original accused No.1 they are arrayed as accused in the aforesaid complaint. It is submitted that there is no over act attributed to the petitioners except that filing complaint and/or suit on behalf of accused No.2. Therefore, it is submitted that to continue criminal proceedings against the petitioners would be nothing but abuse of process of law and would be unnecessary harassment to the petitioners. Therefore, it is requested to quash the aforesaid complaint *qua* the petitioners.

4. Ms.Shilpa R.Shah, learned Advocate appearing on behalf of the original complainant has tried to oppose the present application and satisfy the Court making out a case against the petitioners. It is submitted by her that looking to the allegations and averments in the complaint, FIR is not required to be quashed and set aside in exercise of powers under Section 482 of the Cr.P.C. Therefore, it is requested to dismiss both the applications. Mr.M.R.Mengdey, learned A.P.P. appearing on behalf of the State has submitted to pass an appropriate order considering the averments and allegations in the complaint.

5. Heard the learned Advocates appearing on behalf of the respective parties.

6. This Court has considered the averments and allegations in the FIR. Both the petitioners are Advocates practicing in the District Court, Surat and have appeared in the proceedings before

the trial Court on behalf of other accused. So far as accused No.3 – petitioner of Criminal Misc. Application No. 4976 of 2007 is concerned, he has appeared on behalf of accused No.2 in Regular Civil Suit No. 74 of 2006 by filing an application for joining her as defendant in the aforesaid suit and the said application was allowed. Original accused No.2 was permitted to be joined as party defendant in the aforesaid suit. Merely because original accused No.3 has appeared in the aforesaid proceedings on behalf of original accused No.2 and nothing further than that, it cannot be said that he has committed any offences as alleged in the FIR. Similarly, original accused No. 4 i.e. Petitioner of Criminal Mis. Application No. 4824 of 2007 is concerned, he has appeared on behalf of original accused No.2 in appeal filed by the original complainant against the order passed by the learned trial Court allowing the application of the original accused No.2 permitting her to be joined as defendant to the aforesaid proceedings

and that; he has filed another suit on behalf of original accused No.2 against original complainant and nothing further than that, it cannot be said that he has committed any offences as alleged in the complaint / FIR. Even otherwise, on bare reading of FIR and considering the averments and allegations in the complaint to be true, no case is made out against the petitioners – original accused Nos. 3 and 4 for the offences punishable under Sections 33, 34, 114, 120A, 120B, 406, 420, 386, 506(2) of the Indian Penal Code as alleged in the FIR. To continue the criminal proceedings against the petitioners – original accused No.3 and 4 would be nothing but abuse of process of law and unnecessary harassment to the petitioners. Merely because some proceedings are initiated by the Advocates and no further over act is attributed, it cannot be said that the petitioners who are Advocates have committed any offences as alleged. Under the circumstance, it is a fit case to exercise powers under Section 482 of the Cr.P.C.

to quash and set aside the complaint / FIR *qua* the applicants- original accused Nos. 3 and 4.

7. For the reasons stated above, both the applications succeeds. The impugned complaint / FIR being I.C.R.No.327 of 2007 registered before the Umra Police Station, Surat is hereby quashed and set aside *qua* the applicants – original accused Nos. 3 and 4. Rule is made absolute to the aforesaid extent in each of the applications.

[M.R.Shah, J.]

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